

§ 1.672(b). The official record and printed publications shall be accompanied by a paper which shall:

- (1) Identify the official record or printed publication;
- (2) Identify the portion thereof to be introduced in evidence; and
- (3) Indicate generally the relevance of the portion sought to be introduced in evidence.

(b) [Reserved]

(c) Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or to the admissibility of the official record or printed publication shall be filed no later than the date set by the administrative patent judge for the opponent to file objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to object to the admissibility of the official record or printed publication on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond by filing one or more supplemental affidavits, official records or printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental affidavits under § 1.672(c). No objection to the admissibility of the supplemental evidence shall be made, except as provided by § 1.656(h). The pages of supplemental affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(d) Any request by an opponent to cross-examine on oral deposition the affiant of a supplemental affidavit submitted under paragraph (c) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with re-

spect to an affidavit served by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file notice of a deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

[60 FR 14533, Mar. 17, 1995]

§ 1.683 Testimony in another interference, proceeding, or action.

(a) A party may introduce into evidence, if otherwise admissible, testimony by affidavit or oral deposition and referenced exhibits from another interference, proceeding, or action involving the same parties by filing a copy of the affidavit or a copy of the transcript of the oral deposition and the referenced exhibits. If the testimony and referenced exhibits relate to the party's case-in-chief, they shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does

not file any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-chief. If the testimony and referenced exhibits relate to rebuttal, they shall be filed together with any affidavits served by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not file any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to file affidavits under § 1.672(b) for its case-in-rebuttal. Pages of affidavits and deposition transcripts served under this paragraph and any new exhibits served therewith shall be assigned sequential numbers by the party in the manner set forth in § 1.672(b). The testimony shall be accompanied by a paper which specifies with particularity the exact testimony to be used and demonstrates its relevance.

(b) Unless otherwise ordered by an administrative patent judge, any written objection by an opponent to the paper or the admissibility of the testimony and referenced exhibits filed under this section shall be filed no later than the date set by the administrative patent judge for the opponent to file any objections under § 1.672(c) to affidavits submitted by the party under § 1.672(b). An opponent who fails to challenge the admissibility of the testimony or referenced exhibits on a ground that could have been raised in a timely objection under this paragraph will not be entitled to move under § 1.656(h) to suppress the evidence on that ground. If an opponent timely files an objection, the party may respond with one or more supplemental affidavits, official records or printed publications, which must be filed together with any supplemental evidence filed by the party under § 1.672(c) or, if the party does not file any supplemental evidence under § 1.672(c), no later than the date set by an administrative patent judge for the party to file supplemental evidence under § 1.672(c). No objection to the admissibility of the evidence contained in or submitted with a supplemental affidavit shall be made, except as provided by § 1.656(h). The pages of supplemental

affidavits and the exhibits filed under this section shall be sequentially numbered by the party in the manner set forth in § 1.672(c). The supplemental affidavits and exhibits shall be accompanied by an index of witnesses and an index of exhibits of the type required by § 1.672(b).

(c) Any request by an opponent to cross-examine on oral deposition the affiant of an affidavit or supplemental affidavit submitted under paragraph (a) or (b) of this section shall be filed no later than the date set by the administrative patent judge for the opponent to file a request to cross-examine an affiant with respect to an affidavit filed by the party under § 1.672 (b) or (c). If any opponent requests cross-examination of an affiant, the party shall file a notice of deposition for a reasonable location within the United States under § 1.673(e) for the purpose of cross-examination by any opponent. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination of a witness, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice of a deposition shall be responsible for providing a translator if the witness does not testify in English, for obtaining a court reporter, and for filing a certified transcript of the deposition as required by § 1.676. Within 45 days of the close of the period for taking cross-examination, the party shall serve (but not file) a copy of each deposition transcript on each opponent together with copies of any additional documentary exhibits identified by the witness during the deposition. The pages of deposition transcripts and exhibits served under this paragraph shall be sequentially numbered by the party in the manner set forth in § 1.672(d). The deposition transcripts shall be accompanied by an index of the names of the witnesses, giving the number of the page where cross-examination, redirect and recross of each witness begins, and an index of exhibits of the type specified in § 1.672(b).

[60 FR 14534, Mar. 17, 1995]

§ 1.684 [Reserved]**§ 1.685 Errors and irregularities in depositions.**

(a) An error in a notice for taking a deposition is waived unless a motion (§ 1.635) to quash the notice is filed as soon as the error is, or could have been, discovered.

(b) An objection to a qualification of an officer taking a deposition is waived unless:

(1) The objection is made on the record of the deposition before a witness begins to testify.

(2) If discovered after the deposition, a motion (§ 1.635) to suppress the deposition is filed as soon as the objection is, or could have been, discovered.

(c) An error or irregularity in the manner in which testimony is transcribed, a certified transcript is signed by a witness, or a certified transcript is prepared, signed, certified, sealed, endorsed, forwarded, filed, or otherwise handled by the officer is waived unless a motion (§ 1.635) to suppress the deposition is filed as soon as the error or irregularity is, or could have been, discovered.

(d) An objection to the deposition on any grounds, such as the competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition, is waived unless an objection is made on the record at the deposition stating the specific ground of objection. Any objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under § 1.656(h).

(e) Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an administrative patent judge or the Board.

[49 FR 48455, Dec. 12, 1984; 50 FR 23124, May 31, 1985, as amended at 60 FR 14534, Mar. 17, 1995]

§ 1.687 Additional discovery.

(a) A party is not entitled to discovery except as authorized in this subpart.

(b) Where appropriate, a party may obtain production of documents and things during cross-examination of an

opponent's witness or during the testimony period of the party's case-in-rebuttal.

(c) Upon a motion (§ 1.635) brought by a party within the time set by an administrative patent judge under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an administrative patent judge may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. See § 1.647 concerning translations of documents in a foreign language.

(d) The parties may agree to discovery among themselves at any time. In the absence of an agreement, a motion for additional discovery shall not be filed except as authorized by this subpart.

[49 FR 48455, Dec. 12, 1984, as amended at 60 FR 14535, Mar. 17, 1995]

§ 1.688 Use of discovery.

(a) If otherwise admissible, a party may introduce into evidence an answer to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission or the written interrogatory and the answer. If the answer relates to a party's case-in-chief, the answer shall be served together with any affidavits served by the party under § 1.672(b) for its case-in-chief or, if the party does not serve any affidavits under § 1.672(b) for its case-in-chief, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-chief. If the answer relates to the party's rebuttal, the answer shall be served together with any affidavits served by the party under § 1.672(b) for its case-in-rebuttal or, if the party does not serve any affidavits under § 1.672(b) for its case-in-rebuttal, no later than the date set by an administrative patent judge for the party to serve affidavits under § 1.672(b) for its case-in-rebuttal.

(b) Unless otherwise ordered by an administrative patent judge, any written objection to the admissibility of an answer shall be filed no later than the date set by the administrative patent